

STATE OF INDIANA

COUNTY OF LAKE

STATE OF INDIANA,

Plaintiff,

v.

JAMIE SAINÉ,
individually and doing business as
INSAINÉ MOTOR SPORTS, and
IMS POWERSPORTS

Defendant.

FILED IN

) CLERK'S OFFICE IN THE LAKE CIRCUIT COURT

) SS:

2006 JUL 3 AM 8 59

CAUSE NO. 45D100607PL00089

THOMAS R. PHILPOT
CLERK LAKE SUPERIOR COURT

CERTIFIED MAIL/

POST MARKED

JUN 27 2006

COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL PENALTIES

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court, pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5.0.5-4(c).
2. At all times relevant to this Complaint, the Defendant, Jamie Saine, was an individual engaged in the sale of goods via the Internet from his principal place of business in Lake County, located at 907 East Commercial Avenue, Lowell, Indiana, 46356.

FACTS

A. Allegations Related to Consumer David S. Phillips' Transaction.

3. On or about December 2, 2005, the Defendant entered into a contract via the Internet with David S. Phillips ("Phillips") of Huntsville, Alabama, wherein the Defendant represented he would sell an all-terrain vehicle to Phillips for Five Hundred Forty-Nine Dollars (\$549.00), which Phillips paid.

4. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale he would deliver the all-terrain vehicle within a reasonable period of time.

5. As of today, the Defendant has yet to either deliver the all-terrain vehicle, or to provide a refund to Phillips.

B. Allegations Related to Consumer John Gonsorick's Transaction.

6. On or about December 10, 2005, the Defendant entered into a contract via the Internet with John Gonsorick ("Gonsorick") of Morgantown, Pennsylvania, wherein the Defendant represented he would sell an all-terrain vehicle to Gonsorick for Four Hundred Sixty-Five Dollars (\$465.00), which Gonsorick paid.

7. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale he would deliver the all-terrain vehicle within a reasonable period of time.

8. As of today, the Defendant has yet to either deliver the all-terrain vehicle, or to provide a refund to Gonsorick.

C. Allegations Related to Consumer Emily Wilkins' Transaction.

9. On or about December 13, 2005, the Defendant entered into a contract via the Internet with Emily Wilkins ("Wilkins") of Eagar, Arizona, wherein the Defendant represented he would sell two (2) all-terrain vehicles to Wilkins for One Thousand One Hundred Dollars (\$1,100.00), which Wilkins paid.

10. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale he would deliver the all-terrain vehicles within a reasonable period of time.

11. As of today, the Defendant has yet to either deliver the all-terrain vehicles, or to provide a refund to Wilkins.

D. Allegations Related to Consumer Frederick Mock's Transaction.

12. On or about December 15, 2005, the Defendant entered into a contract via the Internet with Frederick Mock ("Mock ") of Pinconning, Michigan, wherein the Defendant represented he would sell an all-terrain vehicle to Mock for Four Hundred Fifty-Eight Dollars and Sixteen Cents (\$458.16), which Mock paid.

13. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale he would deliver the all-terrain vehicle within a reasonable period of time.

14. As of today, the Defendant has yet to either deliver the all-terrain vehicle, or to provide a refund to Mock.

E. Allegations Related to Consumer Tony Bartraw's Transaction.

15. On or about December 17, 2005, the Defendant entered into a contract via the Internet with Tony Bartraw ("Bartraw ") of Burnham, Pennsylvania, wherein the Defendant represented he would sell an all-terrain vehicle to Bartraw for Five Hundred Seventy-Five Dollars (\$575.00), which Bartraw paid.

16. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale he would deliver the all-terrain vehicle within a reasonable period of time.

17. As of today, the Defendant has yet to either deliver the all-terrain vehicle, or to provide a refund to Bartraw.

F. Allegations Related to Consumer Craig McCullough's Transaction.

18. On or about December 19, 2005, the Defendant entered into a contract via the Internet with Craig McCullough ("McCullough ") of Sandy, Utah, wherein the Defendant represented he would sell a child's motorcycle to McCullough for Three Hundred Two Dollars and Fifty Cents (\$302.50), which McCullough paid.

19. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale he would deliver the motorcycle within a reasonable period of time.

20. As of today, the Defendant has yet to either deliver the motorcycle, or to provide a refund to McCullough.

G. Allegations Related to Consumer Joshua Honnold's Transaction.

21. On or about December 23, 2005, the Defendant entered into a contract via the Internet with Joshua Honnold ("Honnold ") of Costa Mesa, California, wherein the Defendant represented he would sell a go-cart to Honnold for Five Hundred and One Dollars (\$501.00), which Honnold paid.

22. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of the sale he would deliver the go-cart within a reasonable period of time.

23. As of today, the Defendant has yet to either deliver the go-cart, or to provide a refund to Honnold.

COUNT I – VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

24. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 23 above.

25. The transactions referred to in paragraphs 3, 6, 9, 12, 15, 18, and 21 are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

26. The Defendant is a "supplier" as defined by Ind. Code § 24-5-0.5-2(a)(3).

27. The Defendant's representations to consumers he would sell items to consumers, when the Defendant knew or reasonably should have known the consumers would not receive the items as represented, or any other such benefit, as referenced in paragraphs 3, 6, 9, 12, 15, 18, and 21, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

28. The Defendant's representations to consumers the Defendant would deliver the items, or otherwise complete the subject matter of the consumer transactions within a reasonable period of time, when the Defendant knew or reasonably should have known he would not, as referenced in paragraphs 4, 7, 10, 13, 16, 19, and 22, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

29. The Defendant's representations to the consumers they would be able to purchase the items as advertised by the Defendant, when the Defendant did not intend to sell the items as represented, as referenced in paragraphs 3, 6, 9, 12, 15, 18, and 21, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

30. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 29 above.

31. The misrepresentations and deceptive acts set forth in paragraphs 3, 4, 6, 7, 9, 10, 12, 13, 15, 16, 18, 19, 21, and 22, were committed by the Defendant with the knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Jamie Saine, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant from the following:

- a. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should have known it does not have;

- b. representing expressly or by implication the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know he cannot; and
- c. representing expressly or by implication the consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant, Jamie Saine, for the following relief:

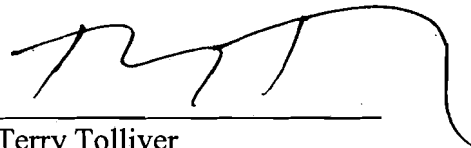
- a. cancellation of the Defendant's unlawful contracts with all consumers, including but not limited to the persons identified in paragraphs 3, 6, 9, 12, 15, 18, and 21, pursuant to Ind. Code § 24-5-0.5-4(d).
- b. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the purchase of items from the Defendant, including, but not limited to, those persons identified in paragraph 3, 6, 9, 12, 15, 18, and 21 in an amount to be determined at trial;
- c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

- d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

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By:


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